

supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water are subject to Reclamation law. The district is not restricted in its use of the nonproject surface water or groundwater, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the irrigation water supply.

Example (2). District A has a contract with the Bureau for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the groundwater resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that groundwater shall not be deemed to be in violation of the Reclamation law. Note: Example 2 also is applicable to the issue of unavoidable groundwater recharge and can also serve as an example in § 426.13.

(B) The principles of this rule as they relate to commingling in one or more Federal Reclamation program funded facilities or jointly financed facilities may be illustrated by the following:

Example (1). A district has nonproject water available to deliver to lands considered not eligible (ineligible) for irrigation water under provisions of Federal Reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities constructed with funds made available pursuant to Federal Reclamation law without the nonproject water being subject to Federal Reclamation law and these regulations. If the district agrees, with prior approval of the Secretary, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by the Secretary, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an appropriate share of the cost to the Federal Government, including interest, of providing the service.

Example (2). The State of Euphoria has a water supply it wishes to transport in the same direction and at the elevation as planned in the Federal Reclamation project.

If the Bureau of Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal Reclamation law and these regulations.

(2) Acquisition of irrigation water from federally financed facilities by exchange shall not subject the users of such water to Federal Reclamation law and these regulations if no material benefit results from the exchange to the recipient of water from the federally financed facilities.

(i) The principles of this rule may be illustrated by the following:

Example. District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B and the irrigation water is in turn delivered to District A. District A is not subject to Federal Reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal Reclamation law and these regulations since it is the beneficiary of the exchange; i.e. a water supply.

§ 426.19 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and M&I (municipal and industrial) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal Reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water

under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

§ 426.20 Public participation.

(a) *In general.* The Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

(1) Each public notice or news release shall include, as appropriate:

- (i) A brief description of the proposed contract terms and conditions being negotiated;
- (ii) Date, time, and place of meeting or hearings;
- (iii) The address and telephone number of a Bureau employee to address inquiries and comments; and
- (iv) The period of time in which comments will be accepted.

(2) Only persons authorized to act on behalf of the contracting entities may

negotiate the terms and conditions of a specific contract proposal.

(3) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(4) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(5) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(6) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(7) Copies of specified proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(8) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

§ 426.21 Small reclamation projects.

(a) Small Reclamation Project Acts (SRPA) loan contracts entered into after October 12, 1982, shall be subject to the provisions of the Act of August 6, 1956 (43 U.S.C. 422e), as amended by section 223 of Public Law 97-293 and as amended by title III of Public Law 99-546.